

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Govern Open Access to Bottleneck Services and Establish A Framework for Network Architecture Development of Dominant Carrier Networks.

Rulemaking 93-04-003
(Filed April 7, 1993)

Investigation on the Commission's Own Motion into Open Access and Network Architecture Development of Dominant Carrier Networks.

Investigation 93-04-002
(Filed April 7, 1993)
(Verizon UNE Phase)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING ELECTRONIC SERVICE OF DOCUMENTS**

The Commission has opened a rulemaking to establish rules for electronic service of documents in all proceedings and is eager to test a draft version of the rules before finalizing them. (See Rulemaking 04-01-005.) It is hoped that testing the rules in current proceedings will refine them prior to adoption. This proceeding, the "Verizon UNE Phase" of Rulemaking 93-04-003/Investigation 93-04-002, has been chosen to test the draft rules. Effective immediately, parties who choose to serve documents electronically should abide by the attached draft rules until further notice. Keep in mind that electronic service is an option, not a requirement. For voluminous filings, parties should continue their current practice of serving these documents by CD rather than electronically.¹

¹ Parties should refrain from serving documents larger than 1 MB by e-mail.

As you will see from the attachment, the draft rules generally affect Commission Rules of Practice and Procedure 2.3 and 2.3.1. These draft rules create the *option* of electronic service in lieu of service by first-class mail, and also describe an electronic “notice of availability” and when that may be used. Section 2.3.1(b) of the rules provides that any party that has provided an e-mail address for the official service list may be served electronically. Electronic service cannot be used if a party has not provided an e-mail address. Further, the rules provide that the serving party must serve documents by another means in the event of any failure of e-mail service, such as notification of non-receipt of an e-mail message, unless the receiving party specifically requests re-service by e-mail. The rules apply to the Commission as well, which means that rulings, proposed decisions, and decisions may also be served electronically.

Please note that the rules still require a paper copy of all documents to the Administrative Law Judge, so please continue to mail me a hard copy of documents in addition to your electronic service. The Telecommunications Division staff on the service list should also receive a paper copy. Please note that nothing in these draft rules alters any of the Commission’s rules governing the filing of documents with the Commission.

If you have any questions or problems with this test of the draft rules, or if you do not wish to receive service of documents by e-mail, please contact Administrative Law Judge Dorothy Duda at (415)-703-2800 or dot@cpuc.ca.gov.

Therefore, **IT IS RULED** that:

1. Effective with this ruling, parties should use the attached draft rules for electronic service of documents in this proceeding until further notice.
2. Parties should continue to serve a paper copy of documents on the Administrative Law Judge and the Telecommunications Division Staff.

Dated February 2, 2004, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

ATTACHMENT A

2.3. (Rule 2.3) Service

(a) Except as otherwise provided in these rules or applicable statute, service of a document may be effected by delivering a copy of the document, mailing a copy of the document by first-class mail, or making service by electronic mail as provided in Rule 2.3.1 to each person whose name is on the official service list or applicable special service list, to the assigned administrative law judge, and to any other person required to be served by statute, by Commission rule or order, or by the administrative law judge. Delivery may be made by handing a copy of the document to the person or leaving it in a place where the person may reasonably be expected to obtain actual and timely receipt. Service by mail is complete when the document is deposited in the mail. Service by electronic mail is complete when the electronic mail message is transmitted, subject to Rule 2.3.1(e). The administrative law judge may require more expeditious service or a particular form of service in appropriate circumstances.

(b) In the event that service cannot be completed by any of the methods described in Rule 2.3(a), the administrative law judge may direct or any party may consent to service by other means not listed in Rule 2.3(a) (e.g., facsimile transmission).

(c) A party may serve and file a Notice of Availability in lieu of all or part of the document to be served. A copy of the complete document must, however, be served on any party who has previously informed the serving party of its desire to receive a complete copy. The original document and copies filed with the Commission must be complete (see Rule 2.5). A separate Notice must be provided for each document to be served, unless the assigned commissioner or administrative law judge authorizes a Notice to include reference to more than one document. The Notice must comply with Rule 2.1(a) and, if relevant, 2.3.1 and must state the document's exact title and summarize its contents. The Notice must state that a copy of the document will be served at the request of the party receiving the notice, and must state the name, telephone number, e-mail address, if any, and facsimile transmission number, if any, of the person to whom such requests should be directed. The party sending the Notice must serve any party making such request within one business day after receipt of the request. If

a Notice of Availability is served by electronic mail in accordance with Rule 2.3.1, it must contain in its subject line the docket number of the proceeding and the words “notice of availability,” followed by a brief identification of the document to be served.

(d) A Notice of Availability may be served and filed in any of the following circumstances:

(1) if a document, including attachments, exceeds 50 pages;

(2) if a document served by sending an e-mail message with the document attached in accordance with Rule 2.3.1(b) has attachments that are not readily reproducible in electronic format, would be too voluminous to attach to the e-mail message, or would be likely to cause e-mail service to fail for any other reason;

(3) if the document is served by making it available at a particular Uniform Resource Locator site (URL) on the World Wide Web. In this case, in addition to the requirements of subd. (c) of this Rule, the Notice must contain a complete and accurate hyperlink to the site at which the document to be served has been made available in a readily readable and downloadable form, and must state the date on which the document was made available at that site. Such a Notice may contain information about how to access or download the document to be served, or any other information required or **allowed** by the assigned commissioner or administrative law judge; it may not contain any attachments.

(4) with the prior permission of the assigned commissioner or administrative law judge.

(e) A copy of the certificate of service must be attached to each copy of the document (or Notice of Availability) served and to each copy filed with the Commission. If a Notice of Availability is served, a copy of the Notice must also be attached to each copy of the document filed with the Commission. The certificate of service must state: (1) the exact title of the document served, (2) the place, date, and manner of service, and (3) the

name of the person making the service. The certificate filed with the original of the document must be signed by the person making the service (see Rule 2.2(e)). The certificate filed with the original of the document must also include a list of the names, addresses, and, where relevant, the e-mail addresses of the persons and entities served and must indicate whether they received the complete document or a Notice of Availability. (See Rule 88, Form No. 6.)

(f) The Process Office shall maintain the official service list for each pending proceeding. It is the responsibility of each person or entity on the service list to provide a current mailing address and, if relevant, current e-mail address, to the Process Office for the official service list. A party may change its mailing address or e-mail address for service or its designation of a person for service by sending a notice to the Process Office and serving a copy of the notice on each party on the official service list.

(g) The administrative law judge may correct and make minor changes to the official service list and may revise the official service list to delete inactive parties. Before establishing a revised service list, the administrative law judge will give each person on the existing service list notice of the proposed revision and an opportunity to respond to the proposal.

(h) The administrative law judge may establish a special service list for documents related to a portion of a proceeding. A special service list allows service to be made on only a portion of the official service list. A special service list may be established, for example, for one phase of a multi-phase proceeding or for documents related to issues that are of interest only to certain parties. Before any special service list is established, the administrative law judge will give each person on the official service list notice of the proposal to establish a special service list and an opportunity to show why that person should be included on the special service list or why a special service list should not be established.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. References: Sections 1704, 3732-3735, Public Utilities Code; Sections 1013, 1013a, Code of Civil Procedure.

2.3.1. (Rule 2.3.1) Service by Electronic Mail (E-Mail Service)

(a) E-mail service may be used in any proceeding which has been assigned a docket number.

(b) E-mail service may be made by sending the document to be served as an attachment to an e-mail message to any person or entity who has provided an e-mail address for the official service list; or by sending an e-mail Notice of Availability in accordance with Rule 2.3(c) and (d) to any person or entity who has provided an e-mail address for the official service list; or by any other method of e-mail service directed by the assigned commissioner or administrative law judge.

(c) When serving a document as an attachment to an e-mail message, the serving party must include in the subject line of the message the docket number of the proceeding and a brief identification of the document to be served, including the name of the serving party, and must include in the text of the message the electronic format of the document (e.g., PDF, Excel), and the name, telephone number, e-mail address, and facsimile transmission number of the person to whom problems with receipt of the document to be served should be directed. A separate e-mail message must be sent for each document to be served, unless the assigned commissioner or administrative law judge authorizes the attachment of more than one document to an e-mail message.

(d) By providing an e-mail address for the official service list in a proceeding, a person or entity consents to e-mail service in any proceeding in which the person or entity is on an official service list.

(e) By utilizing e-mail service, the serving party agrees, in the event of failure of e-mail service, to promptly serve the document by any means authorized by these rules, provided that e-mail service may be used only if (1) the receiving party consents to the re-use of e-mail service, or (2) the serving party determines that the cause of the failure of e-mail service has been rectified. "Failure of e-mail service" occurs when the serving party receives notification, in any manner, of non-receipt of an e-mail message, the receiving party's inability to open or download an attached document, or any other inability of the receiving party to access the document to be served. The serving party and receiving party may agree to any form of substitute service allowed by these rules.

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- (f) In addition to any other requirements of this rule, the serving party must provide a paper copy of all documents served by e-mail service to the assigned administrative law judge, unless the administrative law judge orders otherwise.
- (g) The Commission may serve any document in a proceeding by e-mail service, except those documents for which another form of service is required by applicable statutes or these rules.
- (h) Nothing in this rule alters any of the rules governing filing of documents with the Commission.
- (i) The assigned commissioner or administrative law judge may issue an order consistent with these rules to govern e-mail service in a particular proceeding.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. References: Section 311.5, Public Utilities Code.

(END OF ATTACHMENT A)

CERTIFICATE OF SERVICE

I certify that I have by mail and e-mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Electronic Service of Documents on all parties of record in this proceeding or their attorneys of record.

Dated February 2, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.